

E-002/M-95-54

ORDER ACCEPTING NSP'S INTERPRETATION OF RFP PROCESS
REQUIREMENTS AND REQUIRING NSP TO CONTACT AFFILIATES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Northern
States Power Company for Approval of a
Request for Proposals for Approximately
50 MW of Biomass

ISSUE DATE: December 4, 1995

DOCKET NO. E-002/M-95-54

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PROCEDURAL HISTORY

In 1994 the Minnesota legislature passed Minn. Stat. § 216B.2424 (1994). This statute requires Northern States Power Company (NSP or the Company) to construct and operate, or purchase, 50 megawatts (MW) of installed capacity generated by farm-grown, closed loop biomass by December 31, 1998.

The Commission has determined that NSP must use its competitive bidding process to acquire the biomass generation. On April 24, 1995, the Commission approved NSP's request for proposals (RFP) for the statutorily-mandated 50 MW of biomass generation. ORDER APPROVING PROPOSAL WITH MODIFICATIONS.

On October 2, 1995, NSP announced the selection of its short list of bidders: Kenetech Energy Systems; Minnesota Valley Alfalfa Producers; and Norstar Power, LLC (Norstar). Norstar is composed of NRG Energy, an NSP subsidiary, and Lindroc Energy.

On October 2, 1995, NSP also filed the independent evaluator's initial report with the Commission.

On October 17, 1995, the Department of Public Service (the Department) filed comments. The Department stated that it had reviewed the evaluator's initial report and found it to be appropriate and consistent with the RFP scoring methodology.

The Department stated that there were several technical issues and one non-technical issue which must be resolved before a final bid evaluation. The Department recommended that the bidding process continue while these issues are being resolved. According to the Department, the independent evaluator can investigate these issues

and provide additional analysis in the final report. The Department and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) will submit recommendations to the Commission after reviewing the evaluator's final report and conducting whatever independent investigations are necessary.

On October 18, 1995, the RUD-OAG filed comments. The RUD-OAG stated that it had reviewed the evaluator's initial report and did not request a formal investigation at this time. The RUD-OAG agreed with the Department that there were unresolved issues which would warrant continued monitoring and investigation as the bidding process continues. The RUD-OAG stated that it would notify the Commission of any unresolved concerns after the independent evaluator's final report is issued.

On October 18, 1995, NSP filed a letter, portions of which were proprietary, requesting a ruling by the Commission. NSP asked the Commission for a specific interpretation of the RFP requirements, as applied to the evaluation of bids to date in the biomass bidding process. NSP asked the Commission to respond on an expedited schedule, possibly in conjunction with the Commission's determination of whether an investigation of the initial evaluation phase is warranted.

The Commission met to consider this matter on November 2, 1995. At the November 2 meeting, Norstar informed the Commission that it would be filing a letter with the Commission.

On November 6, 1995, Norstar filed the letter with the Commission. Norstar included a true and correct copy of the original bid submitted to NSP; a correction of the original bid; all inquiries from the independent evaluator and Norstar responses to date; and a contemporary version of the bid response reflecting the changes to the original bid resulting from the independent evaluator's clarification requests.

FINDINGS AND CONCLUSIONS

All parties to this bidding process are aware of the issues of fairness, opportunity for self-dealing, and true competitiveness raised by the participation of an NSP affiliate in the bidding. The Commission has contemplated these issues by structuring the process so that specific safeguards are triggered when an NSP affiliate participates. The Department and the RUD-OAG have indicated that they are monitoring and investigating the process with particular attention to the affiliate participation. The evaluator, too, will be conducting an independent investigation which will include issues relating to the propriety of the bidding process. When the independent evaluator files his final report, the Department and the RUD-OAG will have the opportunity to investigate further, should they feel the need.

The Commission believes that the bidding process is well-structured and is being conducted within the requirements set to ensure fairness and competitiveness. The Commission accepts NSP's interpretation of the RFP process requirements, as applied

to the evaluation of bids to date in this biomass bidding process. The Commission will not require a further investigation at this time, but will await the independent evaluator's final report and the reports and recommendations of the Department and the RUD-OAG.

Although NSP has already informed its affiliates of the requirements of the bidding structure, the Commission finds that this is an appropriate time for the Company to remind its affiliates of these issues. The Commission will require NSP to inform its affiliates, in writing, of the requirements and standards to which they will be held when participating in an NSP bid.

ORDER

1. The Commission accepts NSP's interpretation of the RFP process requirements, as applied to the evaluation of bids to date in this biomass bidding process.
2. Within 30 days of the date of this Order, NSP shall inform its affiliates, in writing, of the requirements and standards to which they will be held when participating in an NSP bid.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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